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a decree for plaintiff, defendant appeals. Reversed, and bill dismissed.

Cabell, Walbridge & L'Anson, for appellant.

G. M. Dillard and John G. Tilton, for appellee.

COMMERCIAL TRUST CO. et al. v. FIRST NAT. BANK OF RICHMOND.

March 9, 1911.

[70 S. E. 532.]

Appeal and Error (§ 1097*)—Affirmance—Matter Disposed of on Former Appeal.—It appearing that the subject of an appeal was finally disposed of on a former appeal, the judgment will be affirmed.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4358-4368; Dec. Dig. § 1097.* 1 Va.-W. Va. Enc. Dig. 651.]

Appeal from Chancery Court of Richmond.

Suit by S. H. Hawes & Co. against the William R. Trigg Company and others. From a decree, the Commercial Trust Company, trustee, and others appeal, adversely to the First National Bank of Richmond, Va. Affirmed.

Eppa Hunton and R. G. Bickford, for appellant.

Gco. Bryan, for appellee.

AMERICAN NAT. BANK OF WASHINGTON, D. C., v. TAYLOR et al.

March 9, 1911.

[70 S. E. 534.]

1. Husband and Wife (§ 14*)—Conveyance to Husband and Wife—Nature of Title.—Code 1887, § 2430 (Code 1904, p. 1187), provides that, if any estate be conveyed to a husband and his wife, they shall take by moieties. T. conveyed certain land to his son by deed, providing that T. and his wife were to have the use of the same for life, with the right to participate in the consideration in case of a sale. T.'s wife having died, the son executed a deed of trust on the land, in which T. joined, to secure the son's debt, and thereafter T. sold all his interest in the land to the son, on condition of his agreement to pay him \$50 every four months as long as T. lived. Held, that the exception in the deed created a life estate in the use of the property in T. and his wife as tenants in common, each of a

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

separate moiety, so that on the wife's death her estate was determined, and did not pass to the husband by right of survivorship.

[Ed. Note.—For other cases, see Husband and Wife, Dec. Dig. § 14.* 8 Va.-W. Va. Enc. Dig. 95; 4 Va.-W. Va. Enc. Dig. 439; 7 Va.-W. Va. Enc. Dig. 222.]

2. Husband and Wife (§ 14*)—Life Estate—Reservation in Husband's Deed.—Where a husband's separate deed reserved a life use to himself and his wife, the husband and wife could not be joint tenants, or tenants by the entireties with the right of survivorship; their estate being lacking in unity of time, title, and possession, the life estate remaining in the husband being obtained from his father, while that of the wife was acquired from him, or from him and the grantee, both of whom executed the deed creating her estate.

[Ed. Note.—For other cases, see Husband and Wife, Dec. Dig. § 14.* 14 Va.-W. Va. Enc. Dig. 594; 8 Va.-W. Va. Enc. Dig. 97.]

3. Life Estates (§ 22*)—Life Tenants—Conveyance of Interest—Rights.—A father conveyed land to his son, reserving a life estate in one-half of the land, and later joined in a deed of trust conveying the property to secure the son's debt. He then sold his life estate to the son, in consideration of the son's agreement to pay him \$50 every three months for life, which agreement was not recorded. Held, that the father, as against a subsequent judgment creditor of the son, was only entitled to interest on one-half of the proceeds of a sale of the property; but since the deed of trust was a prior lien as against the father, and one-half of the proceeds, after paying such debt, was insufficient to produce the sum to which the father was entitled annually, the value of his life estate will be commuted, and paid to him in gross.

[Ed. Note.—For other cases, see Life Estates, Dec. Dig. § 22.* 4 Va.-W. Va. Enc. Dig. 821.]

Appeal from Circuit Court, Fairfax County.

Action by the American National Bank of Washington, D. C., against Walter L. Taylor and others. From a decree in favor of defendants, plaintiff appeals. Reversed.

Moore, Barbour & Keith, for appellants.

Walter Tancil Oliver, for appellees.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.